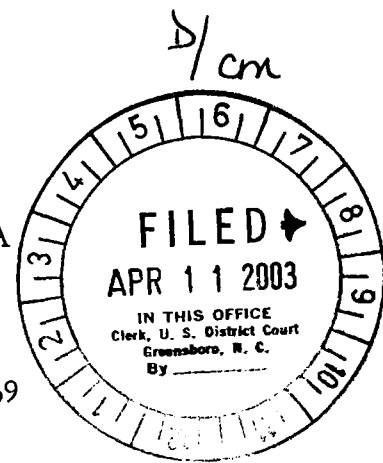


IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



ELIZABETH CURTIS,
Plaintiff,

v.

NORFOLK SOUTHERN RAILWAY CO.,
a Virginia corporation, WORLDCOM, INC.,
a Georgia corporation, and MCI WORLDCOM
NETWORK SERVICES, INC., a Delaware
corporation,
Defendants.

1:01CV00869

ORDER

BEATY, District Judge.

On August 27, 2002, in accordance with 28 U.S.C. § 636(b), a Recommendation of the United States Magistrate Judge [Document #37] was filed in response to Defendant Norfolk Southern Railway Co.'s Motion for Summary Judgment [Document #24].¹ Plaintiff filed a Brief in Opposition to Defendant's Motion for Summary Judgment [Document #32]. Defendant removed this matter to this Court on September 12, 2001, based on diversity of citizenship. For reasons stated therein, the Magistrate Judge recommended that Defendant's Motion for Summary Judgment should be granted with respect to Plaintiff's claims of trespass, continuing trespass, unjust enrichment, slander of title, excessive use of right-of-way, civil conspiracy, declaratory relief and inverse condemnation. Factually, Plaintiff's legal claims were based upon her allegations that Defendant, without Plaintiff's consent or the right to do so, installed, maintained, and operated fiber-optic cable through Plaintiff's land without payment of sufficient

¹The only remaining active Defendant for the purpose of this decision is Defendant Norfolk Southern Railway Company, which was noted in footnote one of the Magistrate Judge's Recommendation.

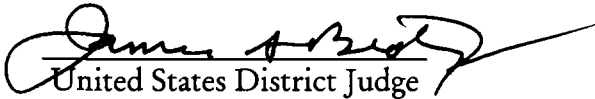
compensation to Plaintiff. Defendant, however, denied violating any of Plaintiff's rights and asserted as an affirmative defense that the three-year statute of limitations of North Carolina General Statute § 1- 52(17) served as a bar to Plaintiff's claims. Relying upon the Fourth Circuit case of Gasperson v. Sprint Communications Co., No. 96-1940, 131 F.3d 134 (table), 1997 WL 770931 (4th Cir. Dec. 16, 1997), which was substantially similar to the instant case, the Magistrate Judge recommended that Defendant's Motion for Summary Judgment be granted on the basis of the three-year statute of limitations of North Carolina General Statute § 1- 52(17).

The Recommendation was served on the parties and a copy was provided to this Court. On September 5, 2002, Plaintiff filed Objections to Magistrate Judge's Recommendation [Document #39]. Defendant filed a Response to Plaintiff's Objections to Magistrate Judge's Recommendation [Document #40].

The Court has made a de novo determination which is in accord with the Magistrate Judge's Recommendation. The Court therefore adopts the Magistrate Judge's Recommendation.

IT IS THEREFORE ORDERED that Defendant Norfolk Southern Railway Company's Motion for Summary Judgment is GRANTED.

This, the 11 day of April, 2003.


United States District Judge